

be tacitly to sanction a wrong upon the public and the state; and therefore it must be put a stop to for the future. For, this court, not only can in no case pronounce a judgment against any right of the state which appears upon the record; though not insisted on by any one on its behalf; but, after having thus ascertained, that neither of the litigating parties has any right, it devolves upon the court, as a judicial duty, in all such cases to protect the interests of the state, and the rights of the people, thus manifested by the record, by all the means within its power, from injury, perversion, or violation in any way whatever. (s)

Upon the whole, therefore, it is my opinion, that these public wharves are no more liable to wharfage, than any one of the streets of the city are subject to toll; that these public wharves, like the public streets, are to be regulated by, and kept in repair at the expense of the city alone; and that, for the purpose of protecting the rights and interests of the public, each of these parties must be prohibited from demanding and receiving wharfage or toll of any description for the use of these public wharves.

Whereupon it is *Decreed*, that these three cases be and they are hereby consolidated, deemed and taken as one case, under the name and style of that which was first instituted. *Decreed*, that this case be and the same is hereby dismissed without costs, as by or against the widow and all the heirs or legal representatives of *Thomas McElderry*, deceased. *Decreed*, that the said *Cumberland Dugan* be and he is hereby perpetually prohibited and enjoined

(s) *Rex v. Leigh*, 4 Burr, 2146; *Penn v. Lord Baltimore*, 1 Ves. 454; *Barclay v. Russell*, 3 Ves. 436; *Gray v. Chaplin*, 3 Cond. Chan. Rep. 52; *Attorney-General v. Burridge*, 6 Exch. Rep. 356; *Dolder v. The Bank of England*, 10 Ves. 354; *Cockey v. Smith*, 3 H. & J. 26; *Plummer v. Lane*, 4 H. & McH. 72.

*STALLINGS v. BROWN*.—10th May, 1726.—*CALVERT, Chancellor*.—Upon a full hearing of the whole proceedings in relation to this cause, and upon mature consideration thereupon had, it appears, that the defendant had no right to prosecute the complaint at common law, for that the sole right is in the crown. Thereupon it is *Decreed*, that the injunction prayed for in the bill be perpetual; and that the defendant pay to the complainant all his costs and charges by him in the said cause laid out and expended.—*Chancery Proceedings*, lib. S. R. No. 1, fol. 129.

When the rights of the crown, (*the state*,) were brought forward by the claimant, in a way which it was impossible not to notice, the court was bound, as every court would be, to take care that justice was done to them. The rights of the crown, (*the state*,) are public rights, conferred not merely for private purposes, or for personal splendour, but for the public service, and to answer the great exigencies of public interest, and claims of justice; as such, they demand the active protection of every court, in which the occurrence of them is suggested to arise.—*Per Sir William Scott*; *The Elsebe*, 5 Robinson's Adm. Rep. 177.